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C O N F I D E N T I A L BRASILIA 001471

SIPDIS

E.O. 12958: DECL: 05/31/2015

TAGS: MARR MOPS MASS PREL BR POL MIL

SUBJECT: BRAZIL REFUSES TERMS OF PROPOSED NOTE ON MILITARY EXERCISES

REF: A. BRASILIA 838

1B. BRASILIA 815

1C. WHA/BSC - EMBASSY/POL TELCONS AND EMAILS

1D. STATE 54960

Classified By: DEPUTY CHIEF OF MISSION PHILIP CHICOLA. REASONS:

1.4 (B)

(D).

11. (C) Summary. The GOB has rejected our proposal to grant A and T status to U.S. servicemembers coming to Brazil for the PKO South and Patriot Angel exercises. GOB officials have indicated that a diplomatic note with language similar to that used in the past would be acceptable. End summary.

12. (C) Per refs, Brazil's Ministry of External Relations (MRE) has been considering terms proposed by USG on 29 March for an exchange of notes establishing status of forces protections and immunities for U.S. servicemembers coming to Brazil for military exercises, with specific focus on establishing the terms through exchange of notes prior to the upcoming PKO South and Patriot Angel exercises. Per ref C, PolCouns subsequently stressed to MRE action officers that granting of Technical and Adminstrative-level protections/immunities under the Vienna Convention would be the key issue for the U.S., and also provided MRE a non-paper prepared by USG interagency legal experts that delinked the SOFA notes from Article 98 issues and the ICC. Mission MLO officers double-tracked progress on the issue with senior MOD officials, who voiced strong support for securing an agreement that would facilitate the exercises, and indicated that a letter from Defense Minister/Vice President Alencar to FM Amorim would be sent in support of granting A/T status to U.S. forces in the exchange of notes.

13. (C) On 27 May, PolCouns met with MRE action officer Marcos Pinta Gama, who told PolCouns informally that MRE attorneys and Secretary General Pinheiro Guimaraes had forwarded to the MOD a recommendation that Brazil not/not grant A and T status to U.S. servicemembers, and recommending that the GOB seek agreement from the USG to conduct the upcoming exercises under the terms of previous diplomatic note texts used in the past to cover joint exercises. Pinto Gama explained that, in the MRE's view, the protections/immunities explicitly provided under the Vienna Convention for A/T status personnel are of a fundamentally different and broader order than protection afforded U.S. personnel in the past, and would raise a range of legal and even constitutional questions for the GOB that would require time to resolve. Pinta Gama asked informally whether the USG could use the terms of earlier notes to cover the immediate exercises while the governments worked toward a longer-term solution. PolCouns replied that the question would have to be referred to SOUTHCOM and Washington.

14. (C) On 30 May MLO Chief was called to the Defense Ministry by Admiral Miguel Angelo Davena, Secretary for Political, Strategic and International Issues, and provided a copy of a letter from Davena to General Craddock, Combatant Commander, SOUTHCOM. In the letter Davena formally states the position relayed per ref 2, i.e., that the MRE had indicated that military exercises in Brazil involving U.S. forces should proceed under the same terms for protections used in the past. Davena said that he considered it a "personal failure" that he had not been able to successfully persuade MRE and MOD senior authorities to grant A/T status, and asked MLO chief to convey his hope that the U.S. and Brazil would still find a way to proceed with the exercises, which Davena said the MOD and Brazil's service commanders consider to be crucial.

15. (C) Comment. Unless we are prepared to provide the GOB with a diplomatic note with essentially the same text as used in the past, the exercises in question cannot proceed.